

MACOMB TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF A SPECIAL MEETING HELD ON  
JUNE 8, 2004

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS  
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: BRIAN FLORENCE, CHAIRMAN  
DAWN SLOSSON, SECRETARY  
MEMBERS: EDWARD GALLAGHER  
TONY POPOVSKI  
VICTORIA SELVA

ABSENT: NONE.

ALSO PRESENT: JEROME R. SCHMEISER, PLANNING CONSULTANT  
COLLEEN O'CONNOR, TOWNSHIP ATTORNEY  
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Secretary FLORENCE called the meeting to order at 7:00 P.M.

1. Roll Call.

Secretary FLORENCE called the Roll Call. All members present.

2. PLEDGE OF ALLEGIANCE.

**MOTION by GALLAGHER seconded by POPOVSKI to elect Brian Florence as Chairman of the Board of Appeals.**

**MOTION carried.**

**MOTION by GALLAGHER seconded by POPOVSKI to elect Dawn Slosson as Secretary of the Board of Appeals.**

**MOTION carried.**

3. Approval of Agenda Items. *(with any corrections)*  
*Note: All fees have been received and all property notices were notified by mail*

**MOTION by GALLAGHER seconded by SELVA to approve the agenda as presented.**

**MOTION carried.**

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PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
4. Hans W. Lohr Family Permanent Parcel No. 08-36-227-017	10.2107(F)(I) 10.0323(A)(10)(I) 10.0323(A)(10)(I) 10.0323(A)(10)(I)

AGENDA ITEMS:

4. VARIANCE REQUEST FROM PROVISION OF THE ZONING ORDINANCE;  
Permission to vary section:  
Section 10.2107 F - request to reduce the setback between buildings from 50' to 49.06'  
Section 10.0323 A 10 1 - request to eliminate the 5 foot raised concrete bumper slab along the south, east and north sides of the building (s).  
Section 10.0323 A 10 1 - request to eliminate the 7 foot raised concrete bumper adjacent to the building (s).  
Section 10.0323 A 10 1 - request to reduce the parking area setback from 4' to 3.5'  
Located on the south side of 21 Mile Road immediately east of the GTWRR;  
Section 36; Hans W. Lohr Family LLC, Petitioner. Permanent Parcel No. 08-36-227-017 Lot 15 and part of lot 16 of Erb Ind. Park.

Chairman FLORENCE read the findings and recommendations of June 4, 2004. They are as follows:

The petitioner is requesting a variance to reduce the site plan standards of the Zoning Ordinance so that the two buildings on the site may be condominiumized. The uses will not change.

On December 19, 1995 the Planning Commission approved a plan for the property in question with two buildings with certain standard conditions attached to that approval.

The plan was approved for two separate buildings. The "as built" plans as provided by the petitioner indicate that several of the standards approved as part of the site plan process were not built in accordance with the approved site plan. These include the parking lot setbacks, the distance between buildings, the location of the loading areas, the driveway width across the front of the buildings and the maneuvering lanes.

RECOMMENDATION:

It is recommended that the variance requests be denied for the following reasons:

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1. Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other industrial structures planned in Macomb Township will be (and are) required to comply with the same setback requirements which is evidence that the setback and dimensional requirements are not unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in the area in Macomb Township. The other owners are or will be required to comply with the dimensional setback requirements. As a result the other property owners do not have the opportunity to make use of additional footage with which to increase the size of their buildings.
3. There is nothing unusual about the parcel in question that sets it apart from other parcels in area. There is nothing to prevent any part of the front yard from being maintained 75' from the front property line. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

The variances, if allowed, would promote the creation of a condo project with substandard site development. The "as built" plans show a clear disregard for the site plan approved by the Planning Commission.

Finally, the petitioner should be apprised of the fact that if the variance (s) is granted, before other actions of the Township may take place, such as site plan considerations, building permits etc., all proper documentation with required fees, including signatures and recording of action with the Macomb County Clerk/Register of Deeds, must take place within 30 days of approval.

Chairman FLORENCE indicated that the petitioner has attached a letter supporting the variance request dated May 19, 2004 which will be included in the record for the meeting. The letter of support is as follows:

Applicant is requesting variances to Article XXI, Light Industrial District (M-1), Section 10.2107F and newly amended Article III, General Provisions, Section 10.0323A. The request is necessary in order to create a condominium of the existing property which will allow for the creation and pending sale of the two existing buildings as individual condo units, to two separate buyer/users. The proposed condominium units will be comprised of the existing buildings with the existing parking and driving areas to be designated as general common element. There is no intent to create smaller units within the buildings. The site will continue to function as it has in the past, as the uses are not being changed, enlarged and/or modified.

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Section 10.2107F of the Ordinance requires a fifty foot setback between buildings within the M-1 Zoning District. While the site is in general conformance with the previously approved site plan, the distance between the existing buildings measures slightly over 49 feet. The difference between the Ordinance requirement and the as-built condition is essentially the thickness of the wall of the buildings. The practical difficulty the applicant faces in meeting the Ordinance is that one of the buildings would have to be shifted approximately one foot. Not only is it impractical to do this, but it would likely result in additional variance requests. The intent of the zoning ordinance with respect to the 50 foot separation requirement is still met with the current slightly over 49 foot separation. We request a variance to this section of the Ordinance from 50 feet separation to 49 feet.

Section 10.0323A of the Ordinance requires a 4 foot separation between the property line and the face of curb. While the site is in general conformance with the previously approved site plan, the distance between the property line and the back of curb measures 3.75 feet, 3.9 feet and 3.52 feet along the west, south and east property lines. The practical difficulty with meeting the Ordinance is that the existing curb would have to be cut out and moved over 0.25 feet (3 inches), 0.10 feet (1.2 inches) and 0.48 feet (5.75 inches) along three property lines. This will result in reduction in depth of the existing parking spaces. The ZBA should note that as the curb measures 0.5 feet from back of curb to face of curb, the distance from the parking space to the property line is actually 4.25 feet, 4.4 feet, and 4.02 feet which can be interpreted to meet the intent of the Ordinance. We request a variance from this section of the Ordinance from 4 feet to 3.5 feet. Applicant does note that based upon its interpretation of this ordinance section, a variance is not even necessary as the 4 foot separation is met.

Section 10.0323A of the Ordinance, was modified November 22, 2003 to require a 5 foot wide sidewalk along the maneuvering where it runs parallel to a building with no parking spaces exist between the building and the driving lane. The intent of this Ordinance was to protect the building from passing traffic. When the original site plan for this site was approved, this Ordinance as not in effect. The sidewalks constructed in accordance with the approved site plan have provided adequate protection for the existing buildings given the use of the site. There is no safety or other detriment. As the use is not intended to change, we submit that the existing sidewalks provide the necessary protection. In addition, we offer the additional comments as supporting documentation. Along the north side of Unit 1, the driving lane is separated from the building by the loading and unloading zone (50 feet). Therefore, the building is not in danger of getting hit by passing traffic. Additionally, a sidewalk would confuse people parked nearby as to the location of the entrance to the building. The applicant does not want to encourage pedestrian traffic to enter the building through the loading area, as it would result in unauthorized access to the shop area of the building and a potentially dangerous situation. Additionally, a sidewalk on the north side of the building would direct pedestrian traffic to cross an existing loading and unloading zone, creating an unsafe situation. Along the east side of Unit 1 a 2.5 foot wide sidewalk exists for protection of the building from

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truck traffic. This sidewalk has been in place since the buildings were constructed in 1996. There have been no incidents of bypassing traffic running into the building. There is no safety concern or other detriment. Along the south side of Unit 1, the driving lane is approximately 30 feet wide. A sidewalk in this area would not be used by pedestrians as there is no access to the building. The building is adequately protected from vehicular traffic by the widened driving lane. There have been no incidents of bypassing traffic running into the building.

Section 10.0323A of the Ordinance, was modified since the original site plan approval to require a 7 foot wide sidewalk where parking is perpendicular to the sidewalk. The specific area on this site where this is being requested is where the parking exists between the two buildings. Currently, there is a 5 foot wide sidewalk with 18 foot wide parking spaces in this area. The existing driving lane width will have to be decreased from 24 feet wide to 22 feet wide to accommodate this request. Decreasing the driving lane width on this site will result in a riskier situation for pedestrians than the existing situation as trucks and vehicles will have less space to maneuver. There is no safety concern or other detriment to the existing situation. As the use is not intended to change, we submit that the existing sidewalks provide the necessary protection. We request a variance from this section of the Ordinance from 7 feet to 5 feet.

Strict application in this matter creates practical difficulty. The situation is unique in that the site is already developed, with existing conditions which are in general conformance with the originally approved site plan, and meet the intent of the ordinance. The requested variances do no confer any special privileges on the applicant that are denied other properties similarly situated, and the variances are not contrary to the spirit and intent of the zoning ordinance.

Petitioner Present: Tom Kalas, Petitioners Attorney, Jennifer Chehab, Petitioners Engineer and Charlie Arent representative on behalf of the petitioner and one of the property owners of one the buildings.

Mr. Kalas stated "I reviewed the Planning Consultants comments earlier this afternoon. He stated they are in a unique situation since his client purchased the buildings after they were built. They were not actually involved in the physical construction of the two buildings. The way the economy currently is for the machine/tool business, which my client is involved in and occupies one of the buildings on the site (13,293 square foot building) is currently shut down. That building will be vacant in the near future. We have two potential users for both the small and large buildings on the site. We have a situation where we end up with two vacant buildings. All because we can't sell the buildings because it's one site, one legal description and we can't segregate these buildings without condoning the site. We obviously intended to come in, and that was the intention of the client submitting a site plan. Which was reviewed by the Township and certain conditions were mentioned by Mr. Schmeiser in his review letter that we needed to seek a variance request. In condoning the site this would allow the creation of two separate legal units for the buildings which could then be sold and occupied, which

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also keeps personnel property taxes coming into the Township. This would also keep from letting the buildings set vacant and becoming an eyesore. Lastly, we do acknowledge that based upon our review that some of the as-builts deviate from the ordinance criteria. The Chairman mentioned the letter of specific items that deviated one of them for example the distances of 50' feet between buildings where at 49.06'. Obviously there is a discrepancy we don't feel that's such a great discrepancy to create a basis of denying the variance request. It's also important for the Board to keep a mind that we're not coming in to expand our use or expand our building. We're not coming in asking to rezone the property or change the use of the property. This property has been functioning as is for the past 7 or 8 years. In addition, there haven't been any traffic safety issues that we're aware. It will continue to function as it is currently built. The only difference will be that there's going to be an existing business there that can now own the building. And there's another user that would like to purchase the smaller building."

Mr. Kalas further reviewed the correspondence letter dated April 5, 2004 from Mr. Koebs, The Township Clerk addressing the site issues and required improvements. The required improvements would result in the site being non-compliant with that area. By making remedies to the site as the Township noted in the review letter would create other issues. The variance requests are very nominal and we hope that the Board would rely on the information provided within the application packet.

Mr. Kalas also commented that they did look at the alternative of splitting the property.

Member GALLAGHER stated, "That at the time the property was developed the Township Attorney stated that this was a poor thing to do. That you would never be able to split these buildings and you would have to always sell them as one unit."

Mr. Kalas stated, "It should've been a condo back then." Member GALLAGHER stated, "It should have been one building built then."

Member GALLAGHER stated, "Really you haven't even got a hardship here, you just created the hardship yourself." Mrs. Chehab stated, "No they purchased the hardship."

Member GALLAGHER stated "Buyer beware."

Mr. Kalas stated "What you have to look at both under the ordinance and statute is not only unnecessary hardship but what's the practicality of requirements now to meet this criteria? Is it practical to take an existing building that's been in the operation of use since 1996 and require us in order to meet that 50' requirement? For example between buildings to move that building? Or is it not practical to require that and to grant the variance to allow that to exist as it currently is and has existed. There is criteria you've got to look at both on the ordinance and by statute and we feel that the practicality of the situation is that let it continue to operate the way it is. Were not asking for anything other than what currently exists."

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Member GALLAGER stated "But you do not want to operate it the way it is. You want to condominiumize this to sell something. So you're not going to operate it the way it is. You want to do something with the buildings."

Mr. Kalas stated "In order for the buildings to be divided we have to condominiumize otherwise we all lose. We're looking at vacant buildings. What purpose does that accomplish? That accomplishes no purpose what so ever."

Mr. Arent reviewed the history of the buildings. Mr. Arent addressed his concerns regarding the issues with the buildings that at the time of purchase he was unaware of. Mr. Arent discussed the challenges involved with trying to selling the buildings. Mr. Arent stated this is the last place for me to turn for relief, by this Board granting this variance.

Public Portion: None.

**MOTION by SELVA seconded by SLOSSON to close the public portion at 7:25 P.M.**

**MOTION carried.**

Member GALLAGHER stated, "I have a comment to make, I'm just not totally thrilled with condominiumizing these buildings. I can see numerous problems; you've got a big building and a small building. And you say everything is split fifty/fifty or however. It doesn't make any difference to me. But here's the guy in the little building and he's got a bunch of junk that he throws out in the common area. Who does the Township go after to get this cleaned up?"

Mr. Arent stated "Well it won't be members of the condo I hope."

Member GALLAGHER stated, "And that's my question who will they ask to clean it up?"

Mrs. Chehab stated, "It would be the taxpayer."

Member GALLAGHER stated, "Everyone that has a manufacturing business doesn't keep it sparkling clean out side."

Mr. Arent stated "Put yourself in my shoes, how do I sell these two buildings?"

Member GALLAGHER stated, "I've been in your shoes I know all about it, I operated a greenhouse for fifty years, and now South America stuff comes in for nothing and I had to tear my greenhouses down. I've been in your shoes and I know exactly what you're going through."

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Mr. Kalas stated, "If I can address the concern, obviously the condominium documents will address the issue of maintaining the land etc." Mr. Kalas stated "The situation that you're presenting us with is a situation that can happen on any piece of property. Whether it's a condo, whether it's a single parcel, whether it's two abutting parcels. You have the neighbor wars and the disputes as to who did what, who left what out. So is that something we can avoid from an enforcement standpoint? We can't do it. I realize the provisions of the Township not only for this parcel but for any parcel. All we can do is prepare the condo documents legally to where they provide all the necessary protections to the Township."

Member GALLAGHER stated, "Anyone who owns a manufacturing business doesn't always keep everything squeaky clean. You can drive down Erb Lumber go down Production Drive and look at some of that junk over there. We don't want that here. And how do you prevent that? You prevent that by having an owner. That owns this piece of property. That takes care of this piece of property. When you've got a condominium you got three owners. One for the building, one for the other building and one for the common area."

Member GALLAGHER stated, "I'm really not in favor of this. I don't think it's a good thing. Myself, I can't approve something like this. You haven't shown me a hardship, basically just the fact that you've got too much building for the property."

Member GALLAGHER stated "You haven't demonstrated a hardship. The buildings can operate the as they are, not a problem. So what do you need a variance for? You need a variance because you want to condominiumize. That's not our problem that's not a hardship as far as I'm concerned."

**MOTION by GALLAGHER seconded by POPOVSKI to deny this variance request from the provision of the zoning ordinance for permission to vary section 10.2107 F - request to reduce the setback between buildings from 50' to 49.06'. With the stipulations spelled out in the Planning Consultants recommendations numbers 1, 2, and 3. Adding that is has not been demonstrated as practical difficulty nor hardship which ever it is that you have to call it. Permanent Parcel No. 08-36-227-017 Lot 15 and part of lot 16 of Erb Ind. Park. This motion is based upon the Planning Consultants recommendations are as follows:**

- 1. Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other industrial structures planned in Macomb Township will be (and are) required to comply with the same setback requirements which is evidence that the setback and dimensional requirements are not unnecessarily burdensome.**



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2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in the area in Macomb Township. The other owners are or will required to comply with the dimensional setback requirements. As a result the other property owners do not have the opportunity to make use of additional footage with which to increase the size of their buildings.
3. There is nothing unusual about the parcel in question that sets it apart from other parcels in area. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

**MOTION carried.**

**MOTION by GALLAGHER seconded by SELVA to deny this variance request from the provision of the zoning ordinance for permission to vary section 10.0323 A 10 l - request to eliminate the 5 foot raised concrete bumper slab along the south, east and north sides of the building (s) as a safety issue, that stipulation was put in the ordinance to prevent any heavy equipment or any vehicle for backing in to them. It's a safety issue for the people inside building and for the building. Permanent Parcel No. 08-36-227-017 Lot 15 and part of lot 16 of Erb Ind. Park. This motion is based upon the Planning Consultants recommendations are as follows:**

1. Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other industrial structures planned in Macomb Township will be (and are) required to comply with the same setback requirements which is evidence that the setback and dimensional requirements are not unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in the area in Macomb Township. The other owners are or will required to comply with the dimensional setback requirements. As a result the other property owners do not have the opportunity to make use of additional footage with which to increase the size of their buildings.
3. There is nothing unusual about the parcel in question that sets it apart from other parcels in area. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

**MOTION carried.**

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**MOTION by GALLAGHER seconded by POPOVSKI to deny this variance request from the provision of the zoning ordinance for permission to vary section 10.0323 A 10 1 - request to eliminate the 7 foot raised concrete bumper adjacent to the building (s), as a safety issue, that stipulation was put in the ordinance to prevent any heavy equipment or any vehicle for backing in to them. It's a safety issue for the people inside the building and for the building. Permanent Parcel No. 08-36-227-017 Lot 15 and part of lot 16 of Erb Ind. Park. This motion is based upon the Planning Consultants recommendations are as follows:**

- 1. Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other industrial structures planned in Macomb Township will be (and are) required to comply with the same setback requirements which is evidence that the setback and dimensional requirements are not unnecessarily burdensome.**
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- 3. There is nothing unusual about the parcel in question that sets it apart from other parcels in area. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.**

**MOTION carried.**

The Zoning Board of Appeals reviewed the request to vary section 10.0323 A 10 1 - request to reduce the parking area setback from 4' to 3.5' with the petitioners.

*After due consideration this Board agreed that the request was not necessary. No action taken.*

**PLANNING CONSULTANT COMMENTS:** None

**ADJOURNMENT:**

**MOTION by POPOVSKI seconded by SLOSSON to adjourn this meeting at 7:40 P.M.**

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**MOTION carried.**

Respectfully submitted,

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Brian Florence, Chairman

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Dawn Slosson, Secretary

Gabrielle M. Baker, Recording Secretary